

Decision **PROPOSED DECISION OF ALJ MACDONALD**
(Mailed 12/11/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sierra Club,

Complainant,

vs.

PacifiCorp, dba Pacific Power (U901E),

Defendant.

Case 15-06-017
(Filed June 22, 2015)

DECISION DISMISSING COMPLAINT WITHOUT PREJUDICE

Background

On June 22, 2015, the Sierra Club filed the instant complaint with the California Public Utilities Commission (Commission) against PacifiCorp. Sierra Club asserted that PacifiCorp completed a transaction with Bowie Resource Partners, LLC (Bowie) that included the sale of certain mining assets without Commission approval in violation of California Public Utilities Code Section 851. Sierra Club's complaint asks the Commission to:

1. Issue an order declaring the transaction between PacifiCorp and Bowie void;
2. Reject advice letter 513-E;¹
3. Direct PacifiCorp to file an application under Section 851; and
4. Consider imposition of a fine.

On July 24, 2015, the ED rejected Advice Letter 513-E without prejudice and ordered PacifiCorp to file a formal application for approval of the sale of the mining assets. PacifiCorp filed Application (A.) 15-09-007 on September 18, 2015. On September 29, 2015, a Prehearing Conference was held in this complaint proceeding.

A.15-09-007 seeks Commission authorization to sell the mining assets at issue in Case 15-06-017. The Application acknowledges the filing of Advice Letter 513-E, the filing of the instant complaint by the Sierra Club, and the subsequent rejection of Advice Letter 513-E. PacifiCorp states in A.15-09-007, that it chose to comply with the contractual obligations and close the transaction, which included the sale of the mining assets, prior to receiving Commission approval. The Sierra Club timely protested A.15-09-007. Parties to this complaint and A.15-09-007 are the same.

Discussion

Where an individual complaint makes allegations that the Commission is addressing for all ratepayers in an adjudicatory application, it is appropriate to dismiss the complaint without prejudice until the Commission completes its

¹ PacifiCorp filed Advice Letter 513-E with the Energy Division (ED) on December 15, 2014 seeking authorization to sell certain mining assets at issue in this complaint. The ED rejected Advice Letter 513-E on July 24, 2015, after this complaint had been filed.

adjudication of the application.² In this way, we preserve scarce Commission resources and avoid inconsistent results. Complainant has protested A.15-09-007 and is a party to that application. Dismissal of the complaint will allow all parties to more efficiently allocate limited resources to addressing the issues in a single proceeding, A.15-09-007. By dismissing the complaint without prejudice, we provide Complainant an opportunity to refile the complaint if, after the Commission resolves A.15-09-007, Complainant has additional actionable claims. Thus, Complainant is not harmed by this dismissal.

Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Katherine Kwan MacDonald is the assigned Administrative Law Judge in this proceeding.

Comments on Proposed Decision

The proposed decision of ALJ MacDonald in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. The Commission is currently considering the issues raised by this complaint in A.15-09-007.
2. Complainants raise no issues not being considered in A.15-09-007.
3. The Commission's limited resources should not be expended on two separate cases where the Commission is considering the same issues.

² Decision 03-08-022.

4. The parties to this complaint are the same parties participating in A.15-09-007.

Conclusion of Law

1. The Complaint should be dismissed without prejudice.

O R D E R

IT IS ORDERED that:

1. This complaint of the Sierra Club is dismissed without prejudice to their right to refile it if, after the California Public Utilities Commission resolves all issues in Application 15-09-007, Complainants have additional actionable claims that are unresolved.

2. Case 15-06-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.